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The case of the West
Hartlepool Harbour...

London

1863

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Hartlepool *W. Mayhew.*
The Case of the West Hartlepool Harbour
and Railway Company.

332
747
No. 13.

DEBENTURE STOCK

NO

SECURITY:

AN ACT OF PARLIAMENT

NO

PROTECTION.

"Gentlemen, I invested my money on the faith of this Act; I cannot, therefore, consent to your repealing it, and for you to repeal it without my consent would be spoliation—robbery."

"If a security *with* an Act of Parliament stands no better than a security *without* an Act of Parliament, what is the worth of an Act of Parliament?"



LONDON:
EFFINGHAM WILSON, ROYAL EXCHANGE.
1863.

SIXPENCE.

"PARLIAMENTARY REPUDIATION."

THE recent decision of a Committee of the House of Commons upon the Bill for "Regulating the Debenture Debt and Capital of the West Hartlepool Harbour and Railway Company, and for other purposes," is a decision without precedent or parallel in the annals of Parliament. If that decision should be ratified by the House, the title to all the Debenture Stock in the kingdom will be shaken, and an incalculable amount of injury and loss will have been inflicted upon the holders of such stock.

It becomes important, therefore, to inquire whether there be any good reason or sound policy, or even a plausible pretext, for the establishment of such a precedent.

By the statement at page 8 it will be seen that this Company, consisting of several amalgamated companies, obtained an Act in 1857 to enable them "to convert loans into Debenture Stock, and to raise further capital." At that time the aggregate capital of the Company in shares and stock amounted to 1,564,560 $\text{l}.$; and this Act authorized them to raise a further capital in new shares or stock of 450,000 $\text{l}.$, making a total of 2,014,560 $\text{l}.$ But, besides this aggregate capital in shares and stock, they had at that time already borrowed 521,520 $\text{l}.$ in loans upon mortgage or bond which were then outstanding. It was to take up and pay off these loans that the Debenture Stock was to be created. By section 7 of this Act power was given to the Company "to raise all or any part of the moneys which they should for the time being *have raised*, or be authorized to raise, on mortgage or bond, by the creation and issue of Debenture Stock, instead of, and to the same amount as, or, if so agreed, in exchange for, the whole or any part of the money which then was, or at any time thereafter might be, owing by the Company, or which they might have power to raise on mortgage or loan, and to guarantee to the stock so created a fixed interest payable half-yearly at a rate not exceeding five per cent. per annum."

By section 8 it is enacted, that this "Debenture Stock and the interest thereon should be a charge upon the general undertaking of the Company, *prior to all other shares or stock of the Company*;" and by section 9, that "the interest should have priority of payment over all interest or dividends, on any other shares or stock, whether ordinary or preference or guaranteed, and should rank next to the interest payable on the mortgages or bonds for the time being."

The mortgages and bonds were, of course, entitled to priority until they should be paid off; and the Act, so far from depriving them of their priority, expressly stipulates (section 13) that the holders of those securities should, during the continuance thereof, be entitled to the same priorities, rights, and privileges, as they would have been if that Act had not been passed. But as the

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money raised by Debenture Stock was to be applied in paying off the mortgages and bonds, the Debenture Stock holders would, as those securities were extinguished, take their place as the first charge upon the revenues of the undertaking.

The Company have never issued the full amount of Debenture Stock—namely, 521,520*l.*—which, under the powers of this Act, they were authorized to issue; but they have created 283,375*l.* only, and of that amount only 134,375*l.* has been actually issued, the remainder (151,000*l.*) having been hypothecated merely. There is no question or dispute, therefore, as to the amount of Debenture Stock, or the perfect legality of its issue. And it is not pretended that there has been any *laches* on the part of the holders of it, for they had no votes and no power or means of interfering in the affairs or management of the Company. They invested their money in good faith, and in confident reliance upon the terms and guarantee of the Act of Parliament, and all they now ask is that the terms of that Act may be adhered to, —that Parliament will not, in gross violation of public faith and the principles of common honesty, repeal that Act without their consent, and in contravention of their just and legal claims under it.

That, however, is what is proposed by the present Bill. The then directors of the Company having fraudulently and illegally issued bonds to the enormous amount of about 2,000,000*l.*, the present directors now seek to legalize those illegal documents and to place them upon a par with the legally issued Debenture Stock. For this purpose the Bill proposes that the “*Debenture Stock and the arrears of interest shall be extinguished*,”—that the holders shall accept in lieu of it a new stock, to be called a First Preferential Stock, in which they are to take equal rank with that enormous mass of illegal bonds. And, inasmuch as the resources of the Company, though amply sufficient to pay the 5 per cent. guaranteed on the Debenture Stock, are totally inadequate to pay that rate upon such stock and the bonds as well, the future rate of interest is to be 3 per cent. instead of 5 per cent. Even that is to be dependent upon each year’s income, and the arrears are never to be paid out of the earnings of any future year. And, as if this were not enough, the original shareholders—those who appointed these fraudulent directors, those who have done all the mischief—have placed themselves first of all, and have raised the ordinary shareholders, who, by their votes, aided and assisted the wrong-doing, almost to a level with the perpetual 5 per cent. Debenture Stock holders.

Remember, the blow that destroys one Debenture Stock strikes at the root of all other Debenture Stocks in the kingdom. If it be once established as a precedent that Parliament can take away rights given by Parliament, without the consent of those to whom

such rights have been given, from that time forth an Act of Parliament ceases to be any protection, and the so-called powers and rights contained therein, can no longer be looked upon as giving to the investor the smallest security.

This is a public question of the very highest importance, and involving considerations of the very gravest character. This unprecedented case of Parliamentary repudiation must either be reversed at once, or it will prove the beginning of a most disastrous end. Were it simply a question as to the dishonest treatment of a few prudent investors in an unspeculative stock, it would be even then of sufficient importance to attract public attention; but, it is much more than that, as, should this decision be once confirmed, what *has* been done may be done again, and all prudent investment in public undertakings would be henceforth at an end.

The question is one involving a great principle. Is it to be understood that, in future, no reliance can be placed upon an Act of Parliament? “We will not speculate,” say the prudent; “we will seek, as a safe and certain investment, the Debenture Stock of some public undertaking, bearing a fixed unvarying interest; and then, come what may, come good times, or come bad times, we are alike safe. It is true that we cannot watch the management—that we cannot interfere in the alterations and changes of the undertaking, as we have no votes; but, being creditors and not debtors, Parliament has taken care of us. Lending our money upon the faith of an Act of Parliament, as we do, we cannot but hold a position above the possibility of attack, and secure from the results of wrong-doing.”

In the case of the West Hartlepool Company, the Debenture Stock is the only innocent stock in the undertaking. It has in all respects regarded the law, and is in all respects within the law. The amount of Debenture Stock issued is within the amount sanctioned by Parliament; and yet the present directors (the creatures of the wrong-doers—that is to say, of the voters) entirely ignore the Debenture Stock holders, and, with cool effrontery, and singular impertinence, impose upon a Committee of the House of Commons to such an extent, that this perpetual 5 per cent. stock, made what it is by an Act of Parliament, is—should the decision of the Commons be confirmed by the Lords—reduced almost to a level with the ordinary shares of the Company.

Thus, those who have given, as in this case, 100*l.* for a good security, freed by Parliament from chance or change, are, by the decision of this Committee, placed upon the same footing as those who have purchased a notoriously speculative ordinary share at 20 or 30 per cent. less; so that, although A gives 30 per cent. more, because A would purchase for that 30 per cent. the special security

of an Act of Parliament, A is declared by Parliament, stultifying itself through its five members in Committee, to have no greater claim upon its protection, and no greater position through its Act, than the ordinary purchaser of the ordinary shares.

The Debenture Stock is admitted to be a perfectly legal stock, and ye: the present directors, representing themselves and their own interests, have asked Parliament to place it, or rank it, not only with 2,000,000*l.* of illegal or over issued bonds, but nearly with the ordinary shares. In short, to put the position truly and plainly, the speculating, voting part of a public company, is to be allowed to destroy the investing and unspeculative. By a system of gigantic fraud the Company is brought to grief, and those who have lent their money, upon the faith of the provisions of an Act of Parliament, are indiscriminately hashed up with those to whom that money has been lent, and all distinction between debtor and creditor destroyed. In justice, the Clarence and Stockton primary charges, and the holders of the ordinary stock, are not entitled to, and ought not to receive, one penny; whereas, the Clarence and Stockton primary charges, being in power, blandly propose to place themselves over all other securities in the undertaking. And these same directors, who find it "convenient" to place the Clarence and Stockton charges first of all, although guilty, and equally "convenient," since none of their clients hold any, to ignore the Debenture Stock, although innocent and legal; these same directors, who themselves snap their fingers at the security of an Act of Parliament, and smuggle their dishonourable Bill past a Committee either bamboozled or oblivious, desire to borrow one million of money, should their present nefarious scheme become law. We would ask—Who do they think will lend it to them? We would inquire—What security do they offer? since their own Bill, if it became law, would itself be ample proof that an Act of Parliament is no security whatever. The fact is, if their Bill were to pass, they would be unable to raise the money they covet, as no honest man could recommend anybody to lend it to them, and no sane man would lend it to them on any recommendation whatsoever, since the Act of Parliament they would have obtained this year, should some fresh fraud necessitate some fresh "convenience," might in its turn, by the same process, be destroyed next year. Thus does Parliamentary repudiation carry with it its own punishment, by annihilating in the future the influence of its own acts.

The Committee who are defending the rights of the Debenture Stock holders, *although representing a large amount of that stock*, have preferred throughout to treat the matter as one of principle, maintaining that it does not signify whether they represent 50*l.* or 50,000*l.* Their petition to the House of

Commons had not, consequently, many signatures attached thereto; but, had they considered a number of signatures of importance, they could easily have procured them. The reason that absolute unanimity does not exist amongst the Debenture Stock holders arises from the fact that many of the holders of Debenture Stock are also holders of the illegal Bonds to a larger amount. This may well account for the statement that all the Debenture Stock holders do not dissent, the balance of loss on their Stock being less than the balance of gain on their Bonds.

The rights of the Debenture Stock holders are clear, distinct, unequivocal, and sustainable. If those of the bond holders are less so, it is to be regretted for their sakes, even whilst the stock holders avail themselves of the advantage for their own. The bondholders cannot enforce their claims against the Company, because none of them can prove that their securities are amongst those that were legally issued. The stock holders, on the other hand, can enforce their right to priority of payment over all other shares or stock, and over all bonds (except those which can be proved to have been legally issued), and they can recover their interest by action or suit at law or in equity, or by the appointment of a receiver. They have not sought to do this; but, if compelled, they ought not to shrink from resorting to it. Why should they? If the holders of this small amount of Debenture Stock have these undeniable and unimpeachable powers and remedies expressly given and reserved to them under the Act of Parliament, why should they shrink from having recourse to them? And if there be no good reason, why, surely, there is as little of good policy as there is of honesty, in these attempts to defraud them, which must end in failure. Debenture Stocks have hitherto been considered unassailable. Lawyers and Brokers have alike declared that, come what might, their position was morally and legally safe and sound; and for Parliament, under such circumstances, to deprive the Debenture Stock holders of their rights, would be an act of gross injustice, of flagrant legislative immorality, a premium upon fraud, an invitation to dishonesty, a condemnation of prudence, and a reckless destruction of all public confidence, of all sense of security, in all past, present, and future Acts of Parliament.

It is of the first importance, alike as a matter of national character and of financial morality, that the Bill should be stopped. One hundred millions of Debenture Stock are involved in this decision; and we are, therefore, rejoiced to learn that the Bill will meet with an opposition before the Lords far stronger and more formidable than that which it encountered in the Commons.

The sensation the decision has created in the monetary world, and upon the Stock-Exchange, will be found reflected in the "Opinions of the Press," reprinted in the "Appendix" attached to this pamphlet.

APPENDIX.

STATEMENT ISSUED BY THE WEST HARTLEPOOL, &c., DEBENTURE STOCK COMMITTEE.

The exact position of affairs since the decision of the Committee of the House of Commons.

This case is one of the most remarkable instances of fraud and mismanagement within railway annals, and the settlement proposed by the Bill, as it now stands amended in the Committee of the House of Commons, will be as great a failure of justice, unless the Bill is altered in the House of Lords.

The facts are as follows:—In 1852, the West Hartlepool amalgamated with itself the Clarence and Stockton and Hartlepool undertakings, upon the terms of giving them primary charge to the extent of 729,054*l.*

The Clarence, and the other undertakings so absorbed, managed, however, to *pass their leading directors into the management of the amalgamated undertaking*, and by a clause in the Amalgamation Act, the primary charges given to the absorbed companies were allowed to *vote*, while the Preference shares of the West Hartlepool were *deprived* of the power of voting, and the amount of the absorbed capital being greater than the amount of the ordinary capital of the West Hartlepool Company, the Clarence, and the other absorbed Company became masters of the whole undertaking, being at the same time guaranteed as a primary charge.

This was a stroke of policy, as adroit on the part of the Clarence, as it was unfortunate for the West Hartlepool shareholders.

The directors were actually in the appointment of the Stockton and Clarence Stocks, and they being so guaranteed, were utterly reckless in the management of the Company, believing all the loss would fall upon other shoulders than their own.

They had power to borrow somewhat over 500,000*l.* They actually borrowed 2,400,000*l.*, and fraudulently suppressed for several years the fact of over-borrowing in their half-yearly published accounts.

In 1857, they obtained an Act authorising them to issue a debenture stock in the place of debentures.

They issued under this about 285,000*l.* of this stock, a small part at 4*½* per cent., and the remainder at 5 per cent., so that the funds of the Company stood thus:—

Primary charges	...	...	...	...	...	£729,054
Legally borrowed	...	...	...	...	...	521,000
Legally borrowed (about)	...	...	...	...	...	1,900,000
Legally issued in Debenture Stock	...	...	...	...	...	285,375
West Hartlepool Preference Shares	...	...	232,747	1	525,584	
Ordinary Stock	...	...	...	292,836	3	

Of the above capitals, there was included in the 729,054*l.* Preference Stock, which had the right of voting, 504,000*l.*, whilst the only stock of the West Hartlepool which had the right of voting was the ordinary stock of 293,000*l.*

The holders of the primary charges, therefore, would beat the West Hartlepool shareholders in voting, nearly two to one.

The scandalous misfeasance of over-borrowing was the act of the Board, thus practically in the appointment of those who held the primary charges, and the holders of these charges are responsible for the entire mismanagement.

The Bill, however, as passed by the Committee of the House of Commons, secures to the holders of this primary charge every sixpence of their capital, and places them still in the position of first mortgagees, notwithstanding the ruin of the undertaking lies at their door.

The Bill, as first introduced, proposed to give to the holders of the legal and illegal debentures, and of the legal Debenture Stock, amounting in the aggregate to 2,699,000*l.*, the first claim upon the remaining funds of the Company, leaving the preference and ordinary shareholders of the West Hartlepool without provision.

These shareholders, however, came into the Committee, and, being prepared to attack the primary charges of 729,054*l.*, upon the ground that they, having mismanaged the Company, ought to be the first sufferers in the ruin, the promoters of the present Bill compromised the matter with the West Hartlepool shareholders, and have agreed to give them one-seventh of the net earnings of the undertaking.

The West Hartlepool Shareholders consist, as above explained,

of Preference and Ordinary	...	...	...	...	...	£ 525,584
The total Debenture Stock and Debt	...	...	...	...	...	2,694,662

Total £3,230,246

of which one-sixth would be 536,707*l.*, so that the West Hartlepool shareholders do not hold quite one-sixth of the total capital, and are to take one-seventh in the division of profits.

It is clear, therefore, that these shareholders are by this arrangement placed very nearly upon a par with the Debenture Stock and Debt of the Company.

The first injustice of the present Bill is to recognise as a primary charge the 729,054*l.*, the owners of which have, by their mismanagement, produced the ruin of the Company.

The second injustice is the proposing to class the Debenture Stock, which is legally created, and has a perfect legal position by the Act under which it is created, with the over-issued debentures, as to which, if the parties lending the money had taken the ordinary precaution of ascertaining that the borrowing powers were not exceeded, the fraud would have been detected; and

The third injustice, is that of proposing to put not only the Preference but the ordinary stock of the West Hartlepool practically upon a par with the Debenture Stock so legally issued and authorized by Parliament.

It cannot be, that when this matter comes to be exposed in the House of Lords, the Bill will be suffered to pass; but as in all other similar cases, the Debenture Stock holders must make themselves strongly heard before the Committee, in order to repel the assertion that they are practically assenting to such a Bill.

2, Copthall Court, Throgmorton Street, April 2, 1863.

FINANCIAL STATEMENT ISSUED BY THE WEST HARTLEPOOL, &c., DEBENTURE STOCK COMMITTEE.

The following will be the Financial Result of the Bill as it now stands:—

Assuming the net income of the Company will hereafter be £120,000

Deduct—Interest on Primary Charges £29,667

Interest on Debt 300,000*l.* at 4*½* ... 13,500

Interest on Class B. 41,000 at 4*½* ... 1,845

45,012

74,988

One-Seventh 10,712

Leaving Six-Sevenths £64,276

64,276 will yield upon the Class A Stock of 2,694,662*l.* about 2*l.* 7*s.* 2*d.* per cent. dividend.

The same dividend upon the Class B Stock (to represent the present preference shares), 232,747*l.*, would require about 5,477*l.*

The one-seventh applicable to the preference and ordinary shares being, as above 10,712*l.*—there will be left 5,235*l.* as dividend upon the ordinary stock. This upon 292,836*l.* will be equal to a dividend of about 1*l.* 15*s.* 9*d.* per cent.

So that, while the Debentures and the Debenture Stock are getting only 2*l.* 7*s.* 2*d.* per cent., the Preference Stock of the Company will be getting the same amount, and the ordinary stock of the Company will be getting 1*l.* 15*s.* 9*d.* per cent.

The Debenture Stock, which is perfectly legal, and by Act of Parliament entitled to take its full interest of five per cent., before the preference and ordinary shares of the Company receive anything, is thus deprived of its rights, and forced to content itself with 2*l.* 7*s.* instead of 5*l.* per cent., and to see the preference Stock of the Company receive an equal dividend and the ordinary stock more than two-thirds of that amount.

2 Copy all Court, Throgmorton Street, April 2, 1863.

OPINIONS OF THE PRESS UPON THE SENSATION CREATED BY THE UNPRECEDENTED DECISION OF THE PARLIAMENTARY COMMITTEE.

THE "DAILY NEWS" OF MARCH 26, 1863.

DEBENTURE STOCK.

The decision of the Select Committee of the House of Commons in favour of the West Hartlepool Harbour and Railway Bill has caused great consternation among the holders of debentures generally, affecting, as it does, the stability of all stock of this class. Everybody knows the risks of joint-stock enterprise, and thousands of investors are ready to incur them, as shareholders, for the sake of the promised success. Other investors, less adventurous, are content to forego the prospect of large gains, and accept a fixed and limited interest for their money, for the sake of the certainty of returns. Hitherto it has been universally assumed in this country that a loan on debentures, secured by an act of the legislature on the property of a public company, was the surest of all investments. Whatever else failed, the faith of Parliament could not fail. So we have been accustomed to say and believe with almost religious faith. Should, however, the Bill, of which a Select Committee of the House of Commons has just approved, become law, we shall have to consider whether the prevalent conviction ought not to be numbered with exploded superstitions. This would be a very serious result. Repudiation of debts is of itself detestable, but repudiation sanctioned by Parliament would be a spectacle portentous of confiscation and widespread ruin. As it is impossible that this sanction can be given except under misapprehension, we will briefly recapitulate the particulars of this West Hartlepool scandal.

By an Act of Parliament called the West Hartlepool Harbour and Railway Act, 1857, powers were given to the Company to raise further capital to the extent of 450,000*l.*, and to create and issue stock to be called Debenture Stock, instead of, or in exchange for, all or any part of the money they were empowered to raise upon mortgage or bond; and "to guarantee to the stock so created a fixed interest payable half-yearly," as therein mentioned, not exceeding five per cent. per annum. By section 8 it was enacted that this

Debenture Stock, and the interest thereon, should be a charge upon the general undertaking of the Company, "prior to all other shares or stock," and that "the interest should have priority of payment over all interest or dividends, on any shares or stock, whether ordinary or preference or guaranteed, and should rank next to the interest payable on the mortgages or bonds." Under the provisions of this Act the Company raised upon Debenture Stock, at 4*1/2* per cent., 25,000*l.*; and upon Debenture Stock, at 5 per cent., 216,375*l.*; making a total of 282,375*l.* What, then, are the rights of those Debenture Stock holders under this Act of Parliament? They contend that the stock they hold was legally issued; that they purchased it upon the faith of the express provisions of the Act, which guarantees to them "a fixed interest, payable half-yearly, with priority of payment over all other shares or stock, and that they should rank next to the interest payable upon the said bonds," and that is the foundation of their claim. They say they have not done or omitted to do anything by which their legal claims have been compromised, and it is not alleged that they have. As Debenture Stock holders they had nothing to do with the management or mismanagement of the Company, and had no votes and no power to interfere even if they had desired to do so. But this Bill, sanctioned so far by a Committee of the House of Commons, repeals the Act on the faith of which they invested their money—deprives them of their fixed and guaranteed rate of interest, and their guaranteed priority of position; and thus confiscates at least 50 per cent. of their property, and leaves them nothing but a tainted and worthless security for the remainder. And why is this? The story is one of the most disreputable in the annals of joint-stock management. The old directors of the Company, in contravention of the Act of Parliament, and in excess of the powers delegated to them by its provisions, had illegally issued bonds to the enormous amount of upwards of two millions more than they were empowered to raise. The object of this Bill is to legalise these illegal documents, and to cover the delinquency of those by whom the wrong was committed at the expense and by the sacrifice of the Debenture Stock holders. The preamble of the Bill says: "Whereas the borrowing powers of the Company have been exceeded, and it is expedient that the debenture debt of the Company (that is, the mass of fraudulently issued bonds) should be converted into stock"—and this Committee of the House of Commons echoes the preamble, and says "it is expedient"—and the Bill goes on to provide that the rights of the Debenture Stock holders and the stock they hold shall be extinguished; that a new stock, to be called a "First Preferential Stock," shall be substituted for their Debenture Stock, bearing interest at 3 per cent., instead of the guaranteed 5 per cent.; that instead of ranking next after the legal bond debt, and having priority of payment over all interest or dividends on any other shares or stock, whether ordinary or preference or guaranteed, they shall take equal, and no more than equal, rank with the two millions of illegal bonds; and shall, moreover, be dependent even for their 3 per cent. interest upon the profits of each separate year; and "the deficiency of one year shall not be made good out of the profits of any subsequent year, or out of any other funds of the Company."

Thus one set of directors having wronged the bond holders, the present set of directors, who are said to be mainly composed of those bond holders, are seeking to indemnify themselves at the expense of the stock holders, and Parliament is called upon to confirm the transaction.

Debenture Stocks have hitherto been regarded with favour and confidence by husbands and fathers investing for the benefit of their wives and children, by trustees under settlements and wills, and by solicitors, bankers, and stockbrokers advising their respective clients as amongst the best of

securities, because they are accurately defined and their rank guaranteed by the Acts of Parliament under which they are created. We cannot wonder, therefore, at the consternation this event has created wherever it has been heard of. It is rightly foreseen that if this pernicious thing can be accomplished one year there is nothing to prevent its being repeated in the next or some subsequent year, and that if it can be successfully achieved by one unsuccessful company, it may be, and will be, attempted by many others.

This is a matter in which every Debenture Stock and bond holder in the kingdom is interested, and we shall be much mistaken if the universal protest at the condemnation with which the attempt will be met are not such as will defeat it and effectually prevent its repetition.

THE "MONEY MARKET REVIEW" OF MARCH 28, 1863.

PARLIAMENTARY REPUDIATION OF DEBENTURE STOCK.

Debenture Stocks have hitherto been a favourite and favoured security with us, and not without many good reasons. Parties desirous of securing a regular and certain income for themselves or their families have preferred them to Government stocks, as being, if not equally safe, quite safe enough, and paying a better interest, whilst exempt from the risk of variation in amount which necessarily attaches to railway and other shares. Debenture Stocks are rarely created without ample resources to meet them; their position and rate of interest are accurately defined in the Act of Parliament creating them; and Parliament has always hitherto most scrupulously regarded and guaranteed their integrity. But a decision has recently been pronounced by the House of Commons which, if not speedily reversed by the House itself, or by the House of Lords, must have the effect of utterly annihilating all faith in these securities.

A railway company which for several years past has been notorious for mismanagement, having duped one set of creditors, now seeks to indemnify them by robbing another class. Having exceeded their borrowing powers by the issue of bonds to the enormous extent of two millions beyond the amount authorised by the Act, they now propose to secure something for the holders of those bonds by swamping the holders of the Debenture Stock. They repudiate in fact, their paramount obligations to the Debenture Stock holders, and modestly ask Parliament to sanction their repudiation, and Parliament has so far responded to their desire.

This is something novel as well as ominous. Spain and Pennsylvania have long enjoyed a world-wide but infamous celebrity for cheap but scandalous expedients to evade the payment of their just debts. The opprobrious stigma brandished upon their names has made them a byword and reproach; and the heritage of shame will descend upon their children from generation to generation, until a long course of honest dealing shall have wiped out the dishonourable stain. But it has hitherto been the pride and the boast of this country that we were above those expedients and free from that stain—that our financial operations, whether national or mercantile, have been founded upon the highest principles of probity and commercial morality. No doubt it may, and too often does occur, that those principles are not rigidly adhered to by individuals in the carrying out of commercial undertakings; but they are, nevertheless, the guiding and governing principles which regulate the whole—which all aspire, or profess to endeavour to conform to, and by which all are judged if they fail to conform. By the Legislature, however, those principles have always been most scrupulously regarded—so scrupulously that a Parliamentary guarantee has hitherto been deemed the highest possible security of which faith could be placed, and it will be an evil day for us when the fact becomes otherwise.

The case in question we believe is briefly as follows:—By the "West Hartlepool Harbour and Railway Act, 1857," that Company were authorized to raise further capital to the extent of 450,000*l.* upon new shares or stock,

with power to raise all or any portion of the amount then owed upon bonds "by the creation and issue of stock to be called Debenture Stock, instead of, or in exchange for, all or any part of the money they had power to raise on mortgage or bonds; and to guarantee to the stock so created a fixed interest payable half-yearly" in the manner therein mentioned, but which was not to exceed 5 per cent. per annum. The Act further provided that this "Debenture Stock and the interest thereon should be a charge upon the general undertaking of the Company prior to all other shares or stock," and that the interest should "have priority of payment over all interest or dividend on any other shares or stock, whether ordinary or preference, or guaranteed," and should "rank next to the interest payable on the mortgages or bonds."

By virtue of this Act the directors raised 285,375*l.*, partly by the issue of Debenture Stock at 4*l.* per cent., and partly by Debenture Stock at 5 per cent. Had they stopped there all might have been well. They were legally empowered to create and issue Debenture Stock instead of, or in exchange for, bonds to that amount. But the Company were under the dominating influence of its Chairman. Under the guidance of this unscrupulous manager, they continued to issue bonds to the enormous amount of upwards of two millions in excess of the amount they were authorised to raise. How these immense sums were raised, or how they were applied, does not clearly appear, but it is certain that they were not applied to the legitimate purposes of the undertaking. Immense sums appear to have been expended in subsidising year after year a number of steamboats trading to St. Petersburg, Copenhagen, and Rotterdam, and in extravagant advances to a number of collieries, all of which are said to have been the private speculations and properties of the Chairman or his connections. At all events, they were not the properties of the Company, and formed no part of the undertaking. The profits from them, if there had been any profits, would not have enriched this Company, though the losses resulting from them have impoverished and ruined it. These transactions as they have been revealed in our courts of law and equity, and in the press, are about the most scandalous that have ever appeared in the annals of joint-stock enterprise; and, if the existing criminal law will not reach such flagrant deeds as these, the existing criminal law stands very much in need of amendment, and should have it.

By the Bill now before Parliament, the Company are seeking so to regulate their capital as to make provision for the payment of interest on those irregularly issued bonds. The preamble of the Bill, with exquisite modesty and simplicity, states, "whereas the borrowing powers of the Company have been exceeded, and it is expedient that the debenture debt of the Company should be converted into stock." And the Bill to carry out the nefarious scheme goes on to enact that "the Debenture Stock and all arrears of dividend and interest thereon, and all rights in respect thereof shall be extinguished." So much for the positive enactments and the Parliamentary guarantee of the faith of which the holders of that stock invested their money. It is true that the Bill provides for the creation of a new stock called a "First Preferential Stock," to be substituted for the extinguished Debenture Stock, but that new stock is to bear interest at 3 per cent. instead of 5 per cent., and even that is to depend upon the profits of the undertaking for each separate year; while the Act expressly stipulates that "the deficiency of one year shall not be made good out of the profits of any subsequent year, or out of any other funds of the Company." And in this First Preferential Stock is to be included all the two millions of bonds illegally issued, so that the Debenture Stock holders, instead of ranking next after the legal bond debt of comparatively trivial amount, and having "priority of payment over all other shares or stock, whether ordinary, preference, or guaranteed," are to be swamped by this overwhelming mass of bond debt.

Never before, we believe, has such a proposition been submitted to Par-

liament, and never again, we hope, will any Parliamentary committee be found to give such a proposition their sanction. It is difficult to conceive how five English gentlemen could be so obtuse, so blind to the gross injustice of it, or so indifferent to the disastrous consequences that must flow from its adoption. What could those gentlemen have said if one of these stock holders had appeared before them with the Act of Parliament in his hand, saying, "Gentlemen, I invested my money on the faith of this Act; I cannot, therefore, consent to your repealing it, and for you to repeal it without my consent would be spoliation—robbery?" That is, in truth, the whole of the case as regards the Debenture Stock-holders; and the judgment of the Committee might have been expressed in a single sentence:—"The rights of these parties are absolute, and are guaranteed by Parliament, and Parliament cannot extinguish or derogate from them without their consent; and the promoters must therefore prove their consent."

Great consternation has already been excited amongst bankers, solicitors, and brokers who have been accustomed to recommend Debenture Stocks as safe and eligible investments, by this untoward innovation, and as many millions are invested in those securities, it is easy to foresee that the excitement will yet be much greater if the decision be not speedily reversed.

THE "DAILY TELEGRAPH," MARCH 24, 1863.

A question of the gravest importance to all Debenture Stock holders in joint-stock companies was decided on Friday last by a Committee of the House of Commons on the "West Hartlepool Harbour and Railway Bill." The Act of 1857 relating to that Company authorised the issue of Debenture Stock with a guaranteed interest of 5 per cent., and the holders of that stock are now called upon to consent to an Act reducing their 5 per cent. Debenture Stock to a 3 per cent. Preferential Stock; and, in the face of their determined opposition to such a repudiation, the Committee of the House of Commons on the Bill has declared the preamble proved—which means that the Bill embodying that principle ought to pass. Some anxiety has been created by the circumstance on the Stock Exchange, it being clearly foreseen that if Parliament were to give its sanction to such a measure it would seriously affect the integrity and value of all the Debenture Stock of all the joint-stock companies in the kingdom.

THE "DAILY STANDARD," MARCH 24, 1863.

A decision has been arrived at by the Select Committee of the House of Commons, in the "West Hartlepool Harbour and Railway Bill," which is of great importance to the public. That decision establishes a precedent, as affecting Debenture Stock holders in public Companies, and should it not be reversed in the Committee of the House of Lords, henceforth an Act of Parliament, however strictly regarded, cannot be looked upon as any protection. The Debenture Stock holders opposed the Bill upon the ground that it destroyed the rights guaranteed to them by the Act under which the stock was created, and on the faith of which they had invested their money. The Committee, however, decided that the preamble was proved, and thus committed an injustice that may tend to shake the faith of Debenture Stock holders in the safety of a class of security held to be up to this time unassailable. The result of this decision is to create great agitation at the Stock Exchange among those brokers who have recommended Debenture securities as the most reliable of any description of property, and the question in the Upper House will be watched with much anxiety. We shall see how Lord Redesdale will deal with the point.

THE "MORNING ADVERTISER," MARCH 24, 1863.

An unfavourable impression has been created at the Stock Exchange by the recent decision of the Select Committee relative to the "West Hartlepool Harbour and Railway Bill." The Debenture Stock holders opposed the Bill,

because it destroyed the rights guaranteed to them by the Legislative enactment under which the stock was created, and on the faith of which they invested. The Committee, however, decided against the Debenture holders, and unless the judgment should be reversed in the House of Lords, this class of security can no longer be regarded with the confidence it has hitherto possessed.

THE "MORNING STAR," MARCH 23, 1863.

An important decision was come to on Friday by the Select Committee of the House of Commons, in the West Hartlepool Harbour and Railway Bill. That decision establishes a grave precedent, as affecting Debenture Stock holders in public companies, and should it not be reversed in the Committee of the House of Lords, henceforth an Act of Parliament, however strictly regarded, cannot be looked upon as any protection. The Debenture Stock holders opposed the Bill, upon the ground that it destroyed the rights guaranteed to them by the Act under which the stock was created, and on the faith of which they had invested their money. The Committee, however, decided that the preamble was proved, and thus committed an injustice that may tend to shake the faith of Debenture Stock holders in the safety of a class of security held to be, up to this time, unavailable.

THE "DAILY NEWS," OF MARCH 21, 1863.

A very important decision, as affecting Debenture Stock holders in railway and all other companies, was to-day come to by the Committee of the House of Commons on the West Hartlepool Harbour and Railway Bill. The Bill was opposed by the Debenture Stock holders because it proposed to deprive them of the position and interest guaranteed to them by the Act under which the stock was created, and on the faith of which they had made the investment; but the Committee nevertheless decided that the preamble was proved.

OPINIONS OF THE PRESS BEFORE THE DECISION OF THE PARLIAMENTARY COMMITTEE.

THE "DAILY TELEGRAPH," OF DECEMBER 11, 1862.

All the Debenture Stock holders require is, that their stock shall rank before the illegal or over-issued bonds, which exceed 2,000,000/. It can scarcely be supposed that Parliament, in a case like this, will undo its own work, and take away rights it has itself given, without the consent of those immediately concerned.

THE "MORNING HERALD," OF DECEMBER 11, 1862.

This important case is stated with clearness by a Committee of respectability, and all parties interested should co-operate with the gentlemen who propose to watch the proceedings of the Directors.

THE "MONEY MARKET REVIEW," OF DECEMBER 20, 1862.

The one object the Committee have in view, is to maintain the proper order or ranking of the Debenture Stock. The present directors of the Company are about to apply to Parliament for a new Act, with the view of taking away from the Debenture Stock holders legal rights upon the faith of which they advanced their money, and which rights are secured to them by enactments now in force. This attempt the Committee are determined to resist, and it seems to us that they are quite right in concluding that it is against the practice of Parliament to withdraw rights conferred by an Act of the Legislature, without the full and free consent of those who are in the possession of rights so secured.

THE "MORNING POST," OF DECEMBER 11, 1862.

The Committee are well advised that Parliament will by no means interfere with the rights of this stock, except by and with the consent of the holders.

THE "MORNING ADVERTISER," OF DECEMBER 11, 1862.

This Bill, if it became law, would materially injure the rights of the Debenture Stock holders.

THE "DAILY NEWS," OF NOVEMBER 10, 1862.

THE WEST HARTLEPOOL HARBOUR AND RAILWAY COMPANY.

To the Editor of the *Daily News*.

SIR,—The Directors of this Company are referring all those Debenture Stock holders who have written to them, denouncing the injustice of the proposition made in their circular (in which they have the effrontery to suggest that the legal stock shall rank with the illegal bonds), to a certain clause in the Act of Parliament creating the stock. Now, Sir, I am very glad that they have done this, as that clause, to use their own words, does indeed "materially affect the position of the holders of Debenture Stock." It establishes clearly both the rights of the holders of that Stock, and the rank in which that Stock itself stands. They say it provides that "the interest on such Debenture Stock shall rank *next* to the interest on the Bonds." I would ask, "What Bonds?" *Next* to such an amount of Bonds as the law has provided for the issue of? Unquestionably, Yes! *Next* to those Bonds which have been issued in excess of the borrowing powers granted by the Act, and which bonds are, consequently, illegal? Emphatically, No! A meeting of the shareholders was called, and they, the shareholders, at the suggestion of the then Directors, sanctioned an application to Parliament, for certain borrowing and stock raising powers. That Act was passed, and by the provisions of that Act all associated with this Company are alike bound. The Debenture Stock was made by that Act a legal stock, and must, therefore, beyond all question, rank before all bonds illegally issued,—that is, in excess of the borrowing powers granted by that Act. The one simple question for the Debenture Stockholders is this:—"Does their stock rank before or after the bonds illegally issued?" I unhesitatingly answer that question for them:—Both in law, and in equity, they rank before each and every bond issued after the amount specially sanctioned by the Act had been raised. The Debenture Stockholders advanced their money upon the faith of an Act of Parliament, and upon the powers and provisions of that Act they take their stand, and by those powers and provisions they are, and they must be, upheld; and they are determined, by every legal means in their power, to defend their just rights, so created and sustained. They necessarily feel an absolute security in these two exceptionally strong positions.

1. An illegal stock can never rank with, or above, a legal stock.
2. An Act of Parliament gave them their position, and the Legislature is certain to uphold its own act.

The law makers will surely enforce the observance of the law that they themselves have made. Those who have regarded it are not to suffer because it has been disregarded by others.

The Board of Directors is composed entirely of Debenture Bond holders, whose interests the said directors seem bent upon unduly favouring at all hazards. I warn them: they will attempt to destroy or oppose the legal rights of the Debenture Stock holders at their peril. They should bear in mind the dangerous position in which the illegal bond holders are placed, and the generosity with which they have hitherto been treated by the other interests involved. Depend upon it, Sir, Debenture Stock holders will not submit to any conditions, sought to be enforced through a new Act of Parliament, or through any other means, that do not fully maintain their legal rights in all their integrity.—I am, Sir, your obedient servant,

A DEBENTURE STOCK HOLDER.

**END OF
TITLE**